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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF OREGON

9 MARK POTTER, in his capacity  
10 as trustee of various  
11 irrevocable trusts,

O R D E R  
Civ. No. 07-244-AA

12 Plaintiff,

13 vs.

14 STEVEN BIGGS, THOMAS CROSSWHITE,  
15 and UNIQUE SETTLEMENTS, LLC, a  
16 foreign corporation,

Defendants.  
17

AIKEN, Judge:

18 Defendants' motion for attorney fee award is granted.

19 DISCUSSION

20 Pursuant to Fed. R. Civ. P. 54(d)(2), defendants, as the  
21 prevailing party, may seek recovery of its attorney fees incurred  
22 in defending against an action brought in this court. Further,  
23 pursuant to Fed. R. Civ. P. 16(f), a court may award attorney  
24 fees against a non-complying party as or in addition to any  
25 sanction deemed appropriate by the court. Defendants are the  
26 prevailing party pursuant to a judgment of dismissal entered in  
27 this case on November 3, 2008. That judgment resulted from  
28 plaintiff's failure to lodge a pretrial order as required by this

1 court, refusal to participate in preparation of a pretrial order,  
2 or to otherwise take any steps required of him by Fed. R. Civ. P.  
3 16.

4 Here, plaintiff filed suit against defendants Biggs,  
5 Crosswhite and Unique Settlement, LLC. Defendants defended  
6 against plaintiff's claims, initially on jurisdictional grounds,  
7 requiring several separate rounds of Fed. R. Civ. P. 12 motions.  
8 Plaintiff then subsequently settled with defendant Crosswhite and  
9 dismissed him from this action. After that plaintiff failed to  
10 communicate with defense counsel or the court, and refused to  
11 participate in or provide any discovery. Ultimately, this  
12 failure extended to plaintiff's failure to participate in  
13 preparing a pretrial order, and eventually resulted in dismissal  
14 of this matter in its entirety.

15 A determination of a reasonable attorney's fee begins with  
16 the "lodestar," which is the "number of hours reasonably expended  
17 on the litigation multiplied by a reasonable hourly rate."  
18 Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,  
19 478 U.S. 546, 563-64 (1986). Defendants carry the burden of  
20 proving the lodestar. Id. The factors considered to determine  
21 the lodestar figure include: (1) the time and labor required; (2)  
22 the novelty and difficulty of the questions; (3) the skill  
23 required; (4) the preclusion of other employment by the attorney;  
24 (5) the customary fee; (6) whether the fee is fixed or  
25 contingent; (7) time limitations imposed by the client or the  
26 circumstances; (8) the amount involved and the results obtained;  
27 (9) the experience, reputation and ability of the attorneys, (10)  
28 the "undesirability" of the case; (11) the nature and length of

1 the professional relationship with the client; and (12) awards in  
2 similar cases. Kerr v. Screen Extras Guild, 526 F.2d 67, 70 (9th  
3 Cir. 1975), cert. denied, 425 U.S. 951 (1976).

4 The court may adjust the lodestar: (1) downward when there  
5 is only partial or limited success, Hensley v. Eckerhart, 461  
6 U.S. 424, 435 (1983); or (2) upward in "rare" and "exceptional"  
7 cases. Delaware at 565. However, there is a strong presumption  
8 that the lodestar figure represents a reasonable fee. Miller v.  
9 Los Angeles County Bd. of Educ., 827 F.2d 617, 621 (9th Cir.  
10 1987).


11 Here, defendants request a total fee award of \$27,291.36.  
12 After considering defendants' motion for fees, defendants'  
13 supporting affidavit containing appropriate and supporting  
14 documentation of defendants' fee request, and defendants'  
15 Supplemental Affidavit filed at the court's request, I find both  
16 the hourly rates and the number of hours expended on the  
17 litigation reasonable. Overall, the attorney fees incurred by  
18 defendants are reasonable for the services rendered and the  
19 results obtained.

20 CONCLUSION

21 Defendants' motion for attorney fee award (doc. 51) is  
22 granted in the amount of \$27,291.36.

23 IT IS SO ORDERED.

24 Dated this 8 day of January 2009.

25  
26   
27 Ann Aiken  
28 United States District Judge